IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO. 1 OF 2005

1. Smt. Rita Maria Lilia Fernandes
alias Carvalho (Mini Bar) Dempo
Chawl, No.15, Vasco da Gama, Goa.

2. Shri Edward Carvalho,
Dempo Chawl, No.15, Vasco da
Gama, Goa. ..... Petitioners .

V/s.

Shri Mario C. Gonsalves.
A 101, 1st Floor, Royal Plaza,
Vasco. ..... Respondent.

Shri S. Vahidulla, Advocate for the petitioners.

Shri J. E. Coelho Pereira, Senior Advocate with Mr. S. Karpe, Advocate for the respondent.

CORAM : R.M. LODHA, J.

DATE : 26TH AUGUST, 2005.

ORAL ORDER :

Heard Mr. S. Vahidulla, the learned Counsel for the petitioners and Mr. J. E. Coelho Pereira, the learned Senior Counsel for the respondent.

2. The grievance of the petitioners in this contempt petition is

that the respondent has willfully and deliberately disobeyed the order of this Court dated 27.1.2000 by putting up the construction within the limit of 6.75 sq. metres.

3. On 27th November, 2000, the Division Bench disposed of Writ Petition No. 244/1999 by consent. The relevant part of the order reads thus :

> " Respondent no.2 is restrained from proceeding further with any construction activity of whatsoever nature within the limit of 6.75 metres from the outer wall of the structure as existing in Chalta No.60 of P.T. Sheet No.103 of City Survey of Vasco da Gama as on date."

4. The subject-matter of the writ petition related to the development permission dated 20.6.1997 granted by the Vasco Planning and Development Authority to M/s. Leo Realtors. The present applicants were the petitioners in Writ Petition and they prayed that Vasco Planning and Development Authority be directed to revoke the development permission dated 20th June, 1997 granted to M/s. Leo Realtors. In that writ petition, consent order was passed whereby M/s. Leo Realtors were restrained from proceeding further with any construction activity of whatsoever nature within the limit of 6.75 metres

from the outer wall of the structure as existing in Chalta No.60 of P.T. Sheet No.103 of City Survey of Vasco da Gama as on date. The petitioners have alleged that despite the restraint order, the respondent No.2 has carried out the construction of a structure within the limit of 6.75 metres and the said act of the respondent is in utter disregard and in breach of the order of this Court dated 27th January, 2000.

5. The respondent has filed his reply affidavit. In his reply affidavit the respondent averred thus :

> "7. As our building was almost completed and as a fact, we were within 6.75 metres of the existing construction, namely, the shop claimed to be held by the Petitioners as tenants, we acceded to what fell from the Hon'ble Court for evolving a solution and submitted to an order, inter alia, that we be restrained from proceeding with construction activity from the outer wall of the structure as existing in Chalta No.60 of P. T. Sheet No. 103 of the City Survey of Vasco-da-Gama.
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> 8. I say that we have not done any construction after the said Order till today within the said limits of 6.75 metres from the

outer wall of the structure as existing in Chalta No.60 of P. T. Sheet No.103 of the City Survey of Vasco-da-Gama, within the meaning of what was consented to by us when we submitted to the orders of this Hon'ble Court, meaning that we have not continued construction of our building within the limits of 6.75 metres from the outer wall of the existing structure in Chalta No.60 of P.T. Sheet No.103 of the City Survey of Vasco-da-Gama.

9. I say that the area between the shop occupied by the Petitioners and the portion of the building which we constructed was an open area. In fact, there was a lot of filth, garbage and waste material being dumped there and also it was utilised as a place for urination and being sort of a secluded space, unwanted elements were misusing the said space and various complaints were received from the shop owners of the new buildings and also the neighbours.

10. I say that for the aforesaid reasons we decided to utilize the said space and at the same time keep it tidy and we sought permissions from the Mormugao Municipal Council on 11.5.2005, for erection of a temporary pandal, which we erected, pursuant to the permissions,

> beyond the backside wall of the shop, claimed to be occupied by the Petitioners as tenants and the new wing of the building of which we stopped the construction. Hereto annexed and marked as Annexure-A is a copy of the said permission granted by the Mormugao Municipal Council. I say that the photographs which we have taken clearly disclose the said fact. Hereto annexed and marked as Annexure – B are the photographs. “

6. From the reply affidavit of the respondent it appears that some temporary pandal has been erected in the open space within the limits of 6.75 metres from the outer wall of the existing structure in Chalta No.60 of P.T. Sheet No.103 of City Survey Vasco da Gama. The said temporary pandal has been erected by the respondent after seeking permission from the Mormugao Municipal Council on 11.5.2005. Along with the reply affidavit, the respondent has annexed few photographs. The photographs show the erection of temporary pandal, wherein some small stalls have been put up.

7. Having closely considered the order dated 27.1.2000 passed in Writ Petition No.244/1999, it cannot be said that by

putting up temporary pandal the respondent has flouted the restraint order dated 27.1.2000. The respondents were restrained from proceeding with any construction activity of any nature whatsoever within the limits of 6.75 metres from the outer wall of the structure existing in Chalta No. 60 of P.T. Sheet No. 103. Putting up temporary pandal is not a construction activity that was contemplated by the Order dated 27.1.2000.

8. No case for civil contempt is made out. The contempt petition is dismissed. Notice is discharged.

R.M. LODHA, J.

ssm.